

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALBERT TERRY GRANDBERRY,

Defendant-Appellant.

UNPUBLISHED

August 25, 2005

No. 254212

Oakland Circuit Court

LC No. 03-192074-FC

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions for armed robbery, MCL 750.529 (habitual offender 4th, MCL 769.12); being a felon in possession of a firearm, MCL 750.224f (habitual 4th, MCL 769.12); and possession of a firearm during the commission of a felony (two counts), MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On August 21, 2003, at approximately 4 a.m., police observed defendant driving in the area of Middlebelt and Nine Mile Roads in Farmington Hills, Michigan. Defendant drew suspicion because of the hour of day and because his clothing, including a leather jacket, was heavy for the time of year and was all dark. Defendant also fit the description of a suspect wanted in connection with other armed robberies. Defendant was observed stopping his vehicle in front of a 7-11 convenience store for several seconds before driving off. Additional undercover police, in unmarked vehicles, were called to the area to help maintain surveillance on defendant.

Approximately fifteen minutes later, defendant entered the 7-11 convenience store. Defendant, wearing a mask and dark clothing and brandishing a semi-automatic shotgun, demanded that the lone clerk give him money from the store's two cash registers. Defendant took cash from both registers after the clerk opened them, including a \$2 bill whose serial number had been recorded by the store. Defendant grabbed several packs of cigarettes, put them into a brown bag he was carrying and left the store.

Police observed defendant leaving the store carrying a bag and a shotgun. Defendant was arrested by Farmington Hills police as he attempted to drive his car out of the lot in which he had parked. Defendant was identified at trial as the person taken from the vehicle.

At trial defendant denied that he was the person pulled from the getaway car and disputed that the gun, money and cigarettes recovered by police from his car were ever in his possession. Defendant claimed police misconduct but offered no proof other than his flat denial of responsibility for the crime.

In determining whether sufficient evidence was presented to sustain a conviction, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), modified 440 Mich 1201 (1992). The reviewing court must draw all reasonable inferences and make credibility choices in support of the jury verdict. *People v Gonzalez*, 468 Mich 636, 640-641; 664 NW2d 159 (2003) (quoting *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 [2000]). Positive identification by witnesses can be sufficient to support a conviction of a crime. The credibility of identification testimony is a question for the trier of fact and will not be resolved anew on appeal. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

Given the overwhelming weight of evidence presented at trial linking the identity of the robber to defendant, and under the tests laid out in *Wolfe*, *Gonzalez*, and *Davis*, a reasonable trier of fact could infer that defendant was, in fact, the masked robber who brandished a shotgun and robbed the 7-11.

The gun, mask, money (most notably, the pre-recorded \$2 bill), and bag are all consistent with the items found in defendant's car. The detailed description of defendant's movements – from the time he was spotted driving at 4 a.m. until the time he was unmasked upon arrest – also comport with the lower court's finding of fact. The description of the defendant, even as masked, from the time he robbed the store until his arrest, is also consistent the court's findings. In sum, nothing offered by defendant persuades us that the court below made an error that would affect the convictions.

Defendant's claim that his sentence is unconstitutionally cruel or unusual is also without merit.

When a trial court imposes a sentence within the recommended guidelines range of accurately scored sentencing guidelines, an appellate court must affirm the trial court's sentence. *People v Houston*, 261 Mich App 463, 472; 683 NW2d 192 (2004), lv gtd 471 Mich 913 (2004). "Remand for resentencing is required only when guidelines have been misscored or when inaccurate information results in the sentence imposed falling outside the appropriate guidelines range, and 'the trial court did not have a substantial and compelling reason for departing from the appropriate sentence range.'" *Id.* at 473 (quoting MCL 769.34[11]).

In this case, there was no plain error in calculating defendant's guideline score. The

sentence imposed was well within the guidelines. Therefore, defendant's argument must fail. *People v Drohan*, 264 Mich App 77, 91-92; 689 NW2d 750 (2004) (a sentence that falls within the guidelines range is not cruel or unusual).

Affirmed.

/s/ Brian K. Zahra

/s/ Hilda R. Gage

/s/ Christopher M. Murray